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Electronically Filed on _____

6 Attorneys for America's Servicing Company

7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF NEVADA**

9 In Re:

Case No: 09-25412-BAM

10 Oscar Arnaldo Orellana
11 Elvira Orellana

Date: February 18, 2010
Time: 2:30 p.m.

12 Debtors.
13

Chapter 13

14 OPPOSITION TO AMENDED MOTION TO VALUE DEBTORS' NON-PRINCIPAL
15 RESIDENCE REAL PROPERTY, AVOID WHOLLY UNSECURED LIEN(S) ENCUMBERING
16 SAME, AND TO MODIFY THE RIGHTS OF PARTIALLY SECURED AND WHOLLY
17 UNSECURED LIENHOLDER(S) AND OBJECTION TO LIENHOLDERS' PROOFS OF
18 CLAIM, IF ANY

19 COMES NOW, America's Servicing Company (hereinafter "Secured Creditor") and files this
20 Opposition stating as follows:

21 Secured Creditor is the first deed of trust holder on 2735 San Vincente Street, Las Vegas, NV
22 89115 (hereinafter "subject property"), and is owed over \$167,000.00. Prior to the Court reducing the
23 lien to \$41,605.00 (resulting in a loss of over \$125,000.00), the Court should allow Secured Creditor to
24 (1) obtain its own valuation of the subject property, and (2) conduct limited discovery to verify that the
25 Debtors are being truthful with the Court as detailed below.

26 Secured Creditor asserts that the subject property should be treated as the Debtors' personal
residence and not subject to a lien-strip of any kind pursuant to 11 USC 1322.

1 The Debtors claim that the subject property is a rental property yet their schedule "G" shows no
2 leases for the subject property. (See exhibit "A"). If the Debtors are not occupying the property, then it
3 can be assumed that they are treating it as a rental property which should be generating rental income
4 and subject to a lease agreement.

5 Presuming that the Debtors moved out of the subject property prior to their bankruptcy, Secured
6 Creditor asserts that it was not the intent of Congress to allow a debtor to move out of its residence
7 during the life of a plan to circumvent the prohibitions of modifying a debt secured by a residence. See
8 11 USC 1322(c)(2).

9 There are too many unanswered questions in the Debtors' attempt to treat the subject property
10 as a rental and strip a large portion of Secured Creditor's interest in the same. The Debtors must
11 disclose the information necessary to answer these questions. To this end, Secured Creditor is
12 obtaining the loan application to determine if the Debtors claimed the subject property as a residence at
13 the time of purchase. Secured Creditor would also like to subpoena utility documents to determine if,
14 and when, the Debtors may have lived in the subject property. Finally, Secured Creditor would like an
15 opportunity to see a copy of any leases the Debtors have concerning the subject property and speak
16 with any alleged tenant(s) of the subject property.

17 Finally, Secured Creditor disputes the \$41,605.00 valuation of the subject property based on an
18 "eppraisal.com" internet printout. Such a valuation does not meet the Debtors' burden to establish the
19 value of the subject property. If the Court is inclined to allow the Debtors to go forward, Secured
20 Creditor asks for some time to obtain its own appraisal and find out the information listed above.

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1 WHEREFORE, Secured Creditor asks that this Court deny the requested relief.

2 DATED this ___ day of February, 2010.

3 WILDE & ASSOCIATES

4 By  #10235

5 **GREGORY L. WILDE, ESQ.**

6 Attorneys for Secured Creditor

7 208 South Jones Boulevard
8 Las Vegas, Nevada 89107

9 Certificate of Facsimile

10 I certify that on February 11, 2010, I served a copy of the foregoing opposition on Debtors'

11 Counsel by facsimile as follows:

12 David M. Crosby, Esq.

13 Crosby & Associates

14 Fax No. 702-382-1921

15 

B6A (Official Form 6A) (12/07)

In re **Oscar Arnaldo Orellana,
Elvira Orellana**Case No. 09-25412

Debtors

SCHEDULE A - REAL PROPERTY

Except as directed below, list all real property in which the debtor has any legal, equitable, or future interest, including all property owned as a cotenant, community property, or in which the debtor has a life estate. Include any property in which the debtor holds rights and powers exercisable for the debtor's own benefit. If the debtor is married, state whether husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor holds no interest in real property, write "None" under "Description and Location of Property."

Do not include interests in executory contracts and unexpired leases on this schedule. List them in Schedule G - Executory Contracts and Unexpired Leases.

If an entity claims to have a lien or hold a secured interest in any property, state the amount of the secured claim. See Schedule D. If no entity claims to hold a secured interest in the property, write "None" in the column labeled "Amount of Secured Claim." If the debtor is an individual or if a joint petition is filed, state the amount of any exemption claimed in the property only in Schedule C - Property Claimed as Exempt.

Description and Location of Property	Nature of Debtor's Interest in Property	Husband, Wife, Joint, or Community	Current Value of Debtor's Interest in Property, without Deducting any Secured Claim or Exemption	Amount of Secured Claim
1483 Miner Way, Las Vegas, NV 89104 (Surrender)	Single Family Residence	H	65,460.00	Unknown
2735 San Vincente St., Las Vegas, NV 89115	Rental Property	H	35,360.00	209,448.00

Sub-Total > **100,820.00** (Total of this page)Total > **100,820.00**

(Report also on Summary of Schedules)

0 continuation sheets attached to the Schedule of Real Property

Exhibit "A"